III. REMARKS/ARGUMENTS

A. STATUS OF THE CLAIMS

Claims 1-17 are pending. Claims 1-17 stand rejected. Applicants respectfully request reconsideration of the rejections of claims 1-17 for at least the following reasons.

B. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(e)

Claims 1-17 stand rejected as allegedly anticipated by U.S. Patent No. 6,740,900 to Cragg et al. ("Cragg"). Specifically, the Office Action asserts:

> Crag discloses a device comprising: a) a proximal end (end at 416); b) a distal end comprising a cutting cap (420) comprising a plurality of deformable blades (424); and c) a shaft (404) between the proximal end and the cutting cap; where the plurality of deformable blades can cut material in a space when the blades not deformed (FIG. 32), after accessing the space through a passage while the blades are deformed (FIG. 30); and where the passage has a smaller cross-sectional area than the lateral cross-sectional area of the undeformed blades while the blades are cutting the material (FIG. 29); where the shaft is flexible (Column 18 lines 17-30); further comprising an axial guidewire lumen between the proximal end and the distal end (Column 17, line 65-Column 18, line 1).

Office Action, Pages 2-3 (emphasis added). Applicants respectfully disagree.

In order for a claim to be anticipated by a reference, that reference must disclose each and every element of the claimed invention. See Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."); see also Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989) ("The identical invention must be shown in as complete detail as is contained in the . . . claim."). Independent claim 1 recites:

1. An enucleation device comprising:

a) a proximal end;

b) a distal end comprising a cutting cap comprising a plurality of deformable blades; and

c) a shaft between the proximal end and the cutting cap;

where the plurality of deformable blades can cut material in a space when the blades not deformed, after accessing the space through a passage while the blades are deformed; and

where the passage has a smaller cross-sectional area than the lateral cross-sectional area of the undeformed blades while the blades are cutting the material.

Appl'n, Claim 1 (emphasis added). Thus, according to claim 1, the claimed deformable blades can cut material when they are not deformed, and can access a space through a passage when the blades are deformed.

Cragg does not disclose the claimed deformable blades. Instead, Cragg discloses cutting tool bands 424_n:

> The cutting head 420 is formed of a thin flexible metal tube that is slit lengthwise into a number N cutting tool bands 424_1 to 424_n. The N cutting tool bands 424_1 to 424_n are spring-like and normally are straight as depicted in FIG. 30. The recess forming tool 400 is inserted through the posterior or anterior TASIF axial bore 22 or 152 to a selected site, e.g., the cephalad end within the most cephalad lumbar vertebral body, in the configuration depicted in FIG. 30.
>
> Then, pull wire 414 is pulled proximally from proximal manipulator 416 and fixed at a first retracted position to commence counter boring the recess within the soft spongy cancellous bone of the vertebral body. The pull wire 414 pulls the cutting tool distal end 422 proximally causing the N cutting tool bands 424_1 to 424_n to bow outward as shown in FIG. 31. Then the pull wire proximal manipulator 416 is locked in position, e.g., by a chuck mechanism, and the drive motor 402 is energized to rotate the cutting head 420

> through mutual rotation of the drive shaft 404 and the pull wire 414. The sharp edges of the cutting tool bands 424_1 to 424_n cut away the surrounding vertebral bone, and the cutting tool bands 424_1 to 424_n expand further outward until the rotation is halted. The pull wire 414 can be pulled back more proximally and set again to expand the cutting tool bands 424_1 to 424_n outward further as shown in FIG. 32 If further enlargement of the recess is desired.

Cragg, Col. 18, ll. 31-55 (emphasis added). Therefore, Cragg's cutting tool bands 424_1 to 424_n cannot cut material while not deformed, but instead can cut material when they are bowed. Similarly, cutting tool bands 424_1 to 424_n do not access a space when deformed, but instead access a space while in their normal (straight) position. Therefore, because Cragg fails to disclose at least this element of independent claims 1, 4, and 11, as well as all claims dependent thereon, Applicants respectfully request that this rejection be withdrawn.

IV. CONCLUSION

Applicants respectfully submit that the application is in condition for allowance. Applicants believe that no fees are necessary in connection with the filing of this document. In the event any fees are necessary, please charge such fees, including fees for any extensions of time, to the undersigned's Deposit Account No. 50-0206. Should any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,
HUNTON & WILLIAMS LLP

Dated: March 6, 2006 By: _____

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